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SUBJECT: RESTITUTION AND THE PROPERTY FUND: ENVOY CHRISTIAN
KENNEDY MEETS WITH ROMANIANS ON HOLOCAUST ISSUES

1. (SBU) Summary: Special Envoy for Holocaust Issues
Christian Kennedy discussed Holocaust education and property
restitution with Romanian officials on June 6-8. The
minority Liberal government on June 28 forced through an
emergency ordinance that should enable the Property Fund to
start the process of becoming listed on the stock exchange --
potentially becoming the largest investment fund in Eastern
Europe as early as spring 2008, if the Liberals have their
way. Both restitution and Holocaust education are nascent
Romanian projects where progress remains slow.
Unfortunately, property restitution has produced many
illegitimate results. It remains to be seen whether the
Property Fund, if ever reified, will be abused for
illegitimate private interests as well. End summary.

Holocaust Education

2. (SBU) Special Envoy Kennedy discussed Holocaust education
with Ministry of Education State Secretary Gabriella Pasztor,
Director General Liliana Preoteasa, and Education Inspector
Doru Dumitrescu on June 8. Holocaust education is now first
introduced in compulsory history courses in 7th grade as a
dimension of World War II. It receives a full chapter in 9th
grade history, is connected to WWII in 10th grade, and is
thematically approached in 11th grade. The 12th grade has an
optional course available to teachers who wish to teach the
"History of Jews and Holocaust" which was announced in
October 2005. Since Congressman Lantos' visit in February
2007, Pasztor said, the Ministry has revised the 12th grade
compulsory history course to specifically discuss the
Holocaust in Romania based on the Wiesel Commission's Final
Report. She added, "of course we will be criticized by the
extremist parties." Pasztor said there were four centers in
Romania for training teachers how to teach the Holocaust and
that each year one or two teachers go to Yad VaShem for
training and others go to Paris and the Holocaust Memorial
Museum in Washington. She said the challenge was training
teachers to teach a subject that they never learned
throughout their education.

3. (SBU) The Elie Wiesel National Institute for the Study of
the Holocaust co-hosted with the Embassy a roundtable on the
"Holocaust in Romania: Unresolved Issues?" that received good
TV and press coverage. The press reported the continuing
problems with anti-Semitism, restitution, and the need for
Holocaust education that were raised by Kennedy, Wiesel
Institute Director Mihail Ionescu, Radu Ioanid of the
Holocaust Memorial Museum, and others, including a Holocaust
survivor. A poll conducted by the Wiesel Institute in May
2007 showed the need for such awareness raising as only 65

percent of Romanians have heard of the Holocaust, and of those, only 28 percent agreed that the Holocaust happened in Romania.

Property Restitution

14. (SBU) National Authority for Property Restitution (ANRP) President Ingrid Zaarour and Vice President Theodor Nicolescu reviewed Romanian property restitution with Kennedy. The ANRP monitors the restitution of forests, agricultural land, religious group's properties, and housing when possible or provides alternative compensation to those who had their property taken by the Communist government during 1945-90. According to Nicolescu, Romania was the first state in Europe to reconstitute properties taken from Jews during the Holocaust, with Antonescu's law 641 in 1944. That law rescinded the Anti-Jewish laws of 1940, restituting property that had been taken shortly before the Communist's re-taking in 1945. The ANRP does not consider property taken prior to 1945, with the exception of claims dating back to 1940 from ethnic communities, such as the Jewish Communities Federation, which has filed over 1800 claims. Restitution has been a very slow process in Romania, but with gradual improvements in the laws governing it. Even though the restitution process started in 1991, documentation other than titles to establish ownership has only been accepted since 2005. The 1995 law allowing Romanians to buy the housing they then occupied solidified the housing privileges people enjoyed during Communism and further complicated restitution, especially of the more valuable estates that were legally subject to restitution instead.

15. (SBU) Since the process of restituting forest and agricultural land started in 1991, about 90 percent of the 800,000 restitution requests submitted by the November 2005

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deadline have been "solved" by local commissions and most are now waiting to be validated by the county commissions, which have validated only 210,000 requests. Once a person's right to land has been validated, the local commission must then develop plans to reconstitute the property. About one-third of the requests have been rejected, which may be pursued in the courts. In rare cases, the ANRP has applied some sanctions, totaling about a million euros, to roughly 10 percent of Romania's mayors -- who preside over the local commissions.

16. (SBU) According to Zaarour, the emerging jurisprudence now favors the former owners, as Romania was fined several times by the European Court of Human Rights for not respecting property rights and the ANRP has started to work with the Superior Council of Magistracy to educate judges on the applicable laws. (Note: In practice, however, post has seen little being done to sanction those who corruptly enrich themselves at the expense of those seeking restitution. Post is aware of numerous cases involving local barons, mayors, prefects, prosecutors, and judges preventing or accepting bribes for restitution, or more blatantly, just grabbing prime real estate for themselves. One example among the thousands illustrates the stark reality: in 2006, the Supreme Court effectively upheld the anti-Jewish 1940 confiscation law by ruling against an American regaining a USD 200,000 house in Braila due to insufficient evidence that his family "retook possession" after 1944, before it was again confiscated when the family left for Israel in 1964; meanwhile a former judge occupies the house. MFA State Secretary Anton Niculescu, in a separate June 6 meeting,

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described it more simply as, "Romania is losing lots of trials in Strasbourg for failing to reconstitute property -- this forces Romania to act." He also gave examples of mayors delaying restitution through administrative means. He alleged mayors were "inclined to use such tools to build their power."

17. (SBU) Religious groups filed over 14,700 claims by the January 2006 deadline for property restitution, including schools, buildings, and other real estate apart from places of worship. Only 2,500 have been solved, mostly with the return of the property itself. Less than 50 claims have been resolved by awarding shares in the Property Fund. (Note: Specifically excluded from the ANRP's competency are the Greek Catholic Churches confiscated in 1948 by the government and given to the Orthodox Church. The Orthodox Church has consistently refused to restitute these properties. Instead, this confiscation may become codified in law as the Religion Law of December 2006 contains a provision that might prevent the Greek Catholics from ever getting back these churches. End note.)

18. (SBU) Zaarour noted that Romania's process of repairing the damage done by Communism sped up when the Democratic Alliance replaced the Social Democratic (PSD) government at the end of 2004. While 30,000 restitution requests were "solved" from the introduction of the dwelling restitution law in 2001 through 2004, the total has reached 95,000 by mid 2007. Restitution requests by physical persons for urban properties totaled 201,750 by the February 2002 deadline (claims not filed by the deadline have recourse now only through the courts), so the ANRP is almost half way through determining the rights to property seized from individuals. However, the ANRP has restituted only 15,000 actual properties seized by the Communists and provided alternative compensation to an additional 5,500 people. It has rejected about 35,000 claims. The remaining 39,000 have been awarded claim certificates that, once independently evaluated, challenged, and re-evaluated by a third evaluator, determine the amount of shares the ANRP instructs the Central Commission to provide in the still unlisted Romanian Property Fund.

Romania's Property Fund -- About to Launch Largest Fund in Eastern Europe

19. (SBU) The Property Fund's assets constitute sizeable ownership positions in major industries yet to be privatized and significant state holdings in some privatized firms. According to Zaarour, the Minister of Economy and Commerce Varujan Vosganian has promised to sign an emergency ordinance by the end of June to enable the Property Fund to proceed with becoming listed on the stock exchange. Until then, shareholders enjoy all rights apart from the crucial ability to trade their shares for currency. No taxes are to be paid

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on the receipt of restituted property or compensation and the first transaction of shares in the Property Fund are not to be taxed.

10. (SBU) Property Fund President Alexandru Paunescu told Kennedy on June 6 that Romania's Property Fund is the most important private firm in the country, comprising minority stakes in all public utilities (natural gas, oil, electricity, maritime transportation, railways transportation, air transportation, etc.). The Fund owns stakes of 10 percent in Petrom and Nuclearelectrica, 12 percent in Electrica branches, and 20 percent in Hidroelectrica. With a potential value of four to six billion euros, it could be the largest investment fund in Eastern Europe and would double the value of the Bucharest Stock Exchange. The Fund's seven-member board operates under the supervision of the Ministry of Economy and Finance. Unproductive assets constitute only about 0.2 percent of the portfolio the Fund received from the various state ministries. The GOR has pledged to the Fund a 9.9 percent stake in the National Savings Bank (CEC) privatization proceeds, but it postponed privatization after rejecting low bids last year. On the positive side, the Fund has received 88 million euros from the successful privatization of the Romanian Commercial Bank (BCR) and should receive a further

160 million euros.

¶11. (SBU) As of May 30, 2007, the Fund had registered only 2,256 shareholders, who hold about 3 percent of the Fund's total portfolio. Two of the largest ANRP certificate holders, AmCit families Malaxa and Auschnitt -- whose combined certificates could account for about 8 percent of the Fund, have opted not to become shareholders due to unfavorable U.S. tax implications, according to Paunescu. (Note: News reports, however, say more precisely that they are considering complaining to the European Court of Human Rights that the GOR has yet to make the Property Fund a reality by listing it on the stock exchange. End note.) Unlike the National Authority for Property Restitution which represents the state, the Fund is a private enterprise where the state's holdings will diminish and private shareholders will gradually increase. Paunescu believes the Fund's real value will likely double in the next two to three years.

¶12. (SBU) Paunescu said the Fund would hire an international manager only after the GOR passed a government ordinance amending the Fund's legislative framework -- a step which he described as being "imminent" for almost a year. He said the problem was that the National Securities Commission (CNVM), which regulates and supervises the capital market, had not been happy with the Fund's initial legislation. While the Fund was established by the National Liberal Party (PNL), the CNVM is a Parliament-controlled body managed by political appointees -- and the top position belongs to the political opposition Social Democrats (PSD) who had publicly vowed to dismantle the fund. However, Paunescu could not understand why the Liberals had not yet issued the emergency ordinance, since it was becoming obvious that the PSD would not vote down the government for fear of facing early elections. Paunescu explained the GOR's initial delay as due to former Finance Minister Sebastian Vladescu's animosity toward the Fund, in principle, despite several explanatory meetings. In Paunescu's opinion, if the GOR would pass an emergency ordinance and delay Parliament's debate on it until at least the Fall, the Fund could "buy enough time" to issue more shares to international shareholders and select an international fund manager so that it would become impossible for the PSD or any other "enemies of the project" to terminate it. As a solely Liberal project, it would be up to the current Liberal government to fully enact the Fund. The Democrats (PD) never got involved in the Fund while in the coalition government and the other political parties were not even consulted prior to establishing the Fund.

¶13. (SBU) Paunescu was confident that the Fund would get a very good, internationally reputed fund manager from one of the 30 letters of interest received for that position from "big names." He said once the government issued the emergency ordinance, the Fund would go through a three- to four-month valuation process audited by KPMG, and then a Fund Manager could be selected, perhaps six to seven months later. The Property Fund cannot therefore be listed on the Bucharest Stock Exchange in 2007, but might get listed by spring 2008.

¶14. (SBU) The Fund's next General Shareholders Meeting (AGA) scheduled for mid-July will decide how to reinvest the

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Fund's dividends. Until now, all dividends have been merely deposited in Romania's top three commercial banks. The next AGA may decide to invest them in CDs or other diversified saving instruments. While the Fund's former Board only preserved the Fund's portfolio, the new enlarged one appointed last month is expected to participate in upcoming capital increases of the firms in the Fund's portfolio; Paunescu specifically mentioned as an example the next capital increase of Transgaz.

The View from the President's Cotroceni Palace

¶15. (SBU) Presidential Counselor Theodor Baconschi told Kennedy on June 7 that he did not have "a clear picture" of the Property Fund, but believed there were "dark forces -- not political ones" hovering around it. He said that there were currently "high levels of speculation in land, buildings, and offices" in Romanian real estate, that justice was very slow in resolving restitution cases, and that bureaucratic problems hindered the development of Romania's private property system. He said he was not aware of how the Property Fund was functioning, but knew it was "very much criticized by many." Baconschi said he did not know if it was "valuable," but that in general, a Liberal European government would encourage such compensation for past confiscations.

The View from the PM's Victoria Palace

¶16. (SBU) The Prime Minister's chef-de-cabinet, Mihnea Constantinescu, told Kennedy in a June 8 meeting that the political piece of the puzzle was easy, but that the problem was in the technical details of the functioning of the Fund, admitting that Romania "probably doesn't have the expertise to handle such a large fund -- the largest in Eastern Europe." Constantinescu said the Fund's legal framework had to be updated to address some serious complaints. He said the government's pause was due to the fact that "if the Fund doesn't function properly, we will face lawsuits." He noted that Prime Minister Tariceanu had urged the legal framework to be updated two weeks prior and believed "probably in one month it would be resettled in a proper way." Constantinescu affirmed that the "government will issue an ordinance to update this Fund, but the problem is to have support in government." He said the government had the duty to ensure political support was in place. Constantinescu said he believed there was the political will to resume the process of enabling the Fund to work. Kennedy concluded that while getting the Fund going was important, getting it right was very important, and ensuring proper financial controls was imperative. Subsequently, on June 28, the GOR passed the emergency ordinance establishing the Property Fund.

¶17. (SBU) Comment: Property restitution proceeds at a very slow pace. Officials provided statistics to demonstrate progress, but a deeper examination suggests that property restitution is still subject to widespread corruption. Only the large cases that exhaust recourse to Romanian courts and end up achieving favorable results in Strasbourg appear to be pushing Romania slowly towards a greater respect for property rights. As for the Property Fund itself, despite positive noises from some GOR officials, it is uncertain that the fund will become fully functional even in 2008, given the current Liberal government's political weakness and the need for parliamentary approval for the fund's final form. Even if it eventually becomes fully listed on the capital markets in Romania, it remains an open question whether the Property Fund will truly become a legitimate tool for restitution or, instead, become another way opportunistic "barons" pocket portions of the country's remaining valuable assets.

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